

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

WILLIAM OFFUTT,

Plaintiff,

v.

Civil Action No. 5:07CV120  
(STAMP)

JIM RUBENSTEIN, Commissioner  
West Virginia Division of Corrections,  
RITA ALBURY, Inmate Movement Coordinator  
and JOHN KING, Chief of Operations  
Regional Jail Authority,

Defendants.

**MEMORANDUM OPINION AND ORDER**  
**AFFIRMING AND ADOPTING REPORT AND**  
**RECOMMENDATION OF MAGISTRATE JUDGE**

On September 21, 2007, the pro se plaintiff filed a civil rights complaint against the above-named defendants, seeking an order directing prison officials to transfer him to a West Virginia Division of Corrections ("DOC") facility that is medically equipped to handle heart conditions. When the plaintiff filed his complaint, he was incarcerated at the Potomac Highlands Regional Jail. The plaintiff asserts that the Regional Jail is not capable of addressing his medical needs.

The plaintiff's complaint was referred to United States Magistrate Judge John S. Kaul for initial review and recommendation pursuant to Local Rule of Prisoner Litigation Procedure 83.02 and 28 U.S.C. §§ 1915(e) and 1915A. Following an order directing the defendants to answer the plaintiff's complaint, the defendants filed a motion and corrected motion to dismiss. A

Roseboro notice was issued, but the plaintiff did not file a response to the motion to dismiss. Upon review of the complaint and motion to dismiss, the magistrate judge issued a report and recommendation recommending that the defendants' motion to dismiss be granted and the plaintiff's complaint be dismissed as moot. The magistrate judge informed the parties that if they objected to any portion of the report, they must file written objections within ten days after being served with copies of the report. To date, no objections have been filed.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. As to those portions of a recommendation to which no objection is made, a magistrate judge's findings and recommendation will be upheld unless they are "clearly erroneous." See Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979). Thus, the report and recommendation of the magistrate judge in this case will be reviewed for clear error.

Because, during the pendency of this case, the plaintiff has been transferred to Mount Olive Correctional Center, a DOC facility that maintains the necessary medical resources to monitor the plaintiff's alleged serious health condition, the magistrate judge found that the plaintiff's complaint should be dismissed as moot. This Court finds no clear error in the recommendation of the

magistrate judge. The relief that the plaintiff requests in his complaint is no longer available.

Accordingly, this Court hereby AFFIRMS and ADOPTS the magistrate judge's report and recommendation in its entirety. The plaintiff's complaint is DISMISSED AS MOOT and the defendants' motion to dismiss is GRANTED. It is ORDERED that this case be DISMISSED and STRICKEN from the active docket of this Court.

Under Wright v. Collins, 766 F.2d 841, 845 (4th Cir. 1985), the plaintiff's failure to object to the magistrate judge's proposed findings and recommendation bars the plaintiff from appealing the judgment of this Court.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the plaintiff and to counsel of record herein. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is DIRECTED to enter judgment on this matter.

DATED: July 3, 2008

/s/ Frederick P. Stamp, Jr.  
FREDERICK P. STAMP, JR.  
UNITED STATES DISTRICT JUDGE